

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: A.D., L.L.C. Sioux City, Iowa NPDES Permit No. 17113-16889 General Permit No. 2	ADMINISTRATIVE CONSENT ORDER NO. 2012-WW-24
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**TO: Casey J. Fenton, Registered Agent
A.D., L.L.C.
1800 3rd Street
Sioux City, IA 51101**

I. SUMMARY

This administrative consent order (order) is entered into between A.D., L.L.C. (AD) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of AD's NPDES General Permit No. 2. AD agrees to pay an administrative penalty of \$4,500.00. AD neither admits nor denies the following provisions and both parties enter into this agreement in the interest of avoiding litigation.

Any questions or responses regarding this order should be directed to:

Relating to technical requirements:

Tom Roos, Environmental Specialist
IDNR Field Office No. 3
1900 North Grand Ave, Suite E17
Spencer, IA 51301
Phone: 712-262-4177

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Phone: 515-281-0824

Payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I and the rules promulgated or permits issued pursuant thereto; and Iowa Code section

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455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

AD neither admits nor denies the following statement of facts:

1. On July 23, 2009, Department Field Office No. 3 (FO3) received a complaint which alleged erosion issues existed at AD's construction site at 2627 South Rustin Street in Sioux City. This complaint alleged that erosion issues were leading to discharges of sediment onto neighboring property.
2. On August 4, 2009, after a site investigation by Department Environmental Specialist Tom Roos, a notice of violation was sent to Casey J. Fenton, AD representative, which outlined deficiencies and requirements at the site. A Storm Water Pollution Prevention Plan (SWPPP) and site inspection logs were requested from Mr. Fenton by August 10, 2009.
3. On April 12, 2011, FO3 received a second complaint of erosion and sediment leaving the property.
4. On April 22, 2011, Mr. Roos went to the construction site and spoke with Mr. Fenton about the complaint. During this visit, it was apparent that sediment had left the property and entered a downstream storm sewer which discharges to a drainage ditch. Mr. Fenton was advised again that he needed to submit a copy of the SWPPP and inspection logs.
5. On May 18, 2011, Mr. Roos and Derek Carmona from the City of Sioux City (City) met with Mr. Fenton at the property to determine compliance. There were still erosion issues on the property due to inadequate erosion and sediment controls. Mr. Fenton was again advised that he needed to submit a copy of the SWPPP and inspection logs.
6. On July 1, 2011, FO3 received a third complaint of erosion and sediment leaving the property.
7. On July 5, 2011, Mr. Roos inspected the property and observed that erosion issues had not been brought into compliance. Mr. Fenton was subsequently advised that the matter was being referred for legal enforcement.

IV. CONCLUSIONS OF LAW

AD neither admits nor denies the following conclusions of law:

1. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted federal regulations pertaining to the issuance of National Pollutant Discharge Elimination System (NPDES) permits for storm water discharge at 567 IAC 60.2 and in 567 IAC chapter 64. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. Number 10 under this definition includes "construction activity" including clearing, grading, and excavation activities. Excluded are operations that result in the

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disturbance of less than one acre of total land area that are not part of a larger common plan of development or sale.

2. Subrule 64.4(2) provides that the Director may issue general permits that are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(2) adopts Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the Department to the contrary.

3. General Permit No.2, Part IV, provides that the permittee must develop and implement a "storm water pollution prevention plan" in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the SWPPP. Disturbed areas must be stabilized within 14 days if no construction activity will take place within 21 days.

Plans must be updated to address changes in a facility's design and operation, and must be modified to address deficiencies noted by the Department. A copy of the plan is required to be furnished to the Department upon request. Qualified personnel must inspect disturbed areas and erosion and sediment control measures at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Reports summarizing the inspections must be made and maintained as part of the plan. Part V of the permit requires that a copy of the plan and reports be retained at the construction site or alternative site approved by the Department. Part VI, E, requires the permittee to furnish any information requested by the Department to determine compliance or to furnish any records required to be kept within a reasonable time.

4. Department subrule 567 IAC 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. This would include AD operating under the authority of NPDES General Permit No. 2. Failure to comply with General Permit No. 2 is a violation of subrule 64.3(1).

V. ORDER

THEREFORE, the Department orders, and AD consents to do, the following:

1. Cease all illegal discharges to waters of the State;
2. Comply with all conditions of the site's NPDES General Permit No. 2; and
3. Pay an administrative penalty of \$4,500.00 within 60 days of the Director signing this order.

VI. PENALTY

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1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations and deterring this party and others from violating storm water permit requirements is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:
 - a. **Economic Benefit.** AD failed to install and maintain adequate runoff control measures throughout the construction site. This avoided several thousand dollars in materials and labor expenses since the ground breaking. The amount of \$1,000.00 is assessed for this factor.
 - b. **Gravity of the Violation.** One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute.

Failure to properly manage storm water runoff from construction sites degrades surface water quality and deposits excess sediment in water channels. Sedimentation of Iowa's waterways is a serious problem, and regulatory agencies have recognized that uncontrolled runoff is a significant contributor to these problems. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. Strict attention must be paid to erosion control in this area due to the mobility of the Loess soil and impact on the Loess Hills and down gradient waters. The amount of \$2,000.00 is assessed for this factor.

c. **Culpability.** AD is engaged in the business of construction and property development. As a company engaged in this business, it has an obligation to be aware of the applicable regulations. As a holder of an NPDES permit, the developers have the obligation to be aware and fulfill the requirements associated with it. The amount of \$1,500.00 is assessed for this factor.

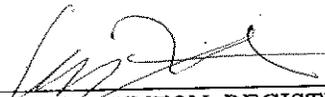
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of AD. By signature to this order, all rights to appeal this order are waived by AD.

VIII. NONCOMPLIANCE

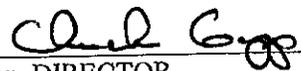
Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section V. of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.

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CASEY J. FENTON, REGISTERED AGENT
A.D., L.L.C.

Dated this 17 day of
Oct, 2012



Chuck Gipp, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 29th day of
October, 2012

A.D., L.L.L.- NPDES Permit No. 17113-16889 (Copy of Order to Central Office Records File), Tom
Roos- FO 3, Carrie Schoenebaum- Legal Services Bureau, U.S. E.P.A, I.C.7.b.

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